

MEMORANDUM

TO: Planning & Zoning Commission

FROM: Jeremy Ginsberg, Planning & Zoning Director

RE: Proposed Zoning Regulation amendments related to:
Issues regarding public plaza requirements in the CBD Zone and
Parking ratios for finished space in basements in commercial buildings

DATE: May 18, 2018

Background

For more than forty years, the Darien Zoning Regulations have limited buildings in the CBD Zone (downtown Darien) to 2 stories and 28 feet in height. An incentive within the Regulations allows downtown property owners and developers to create additional square footage within a third story through the creation of a publicly accessible plaza on the property. Through the years, several developments in downtown have taken advantage of the incentive provision, including, but not limited to, the Darien Sport Shop and 1020 Boston Post Road.

On January 23, 2018, the Commission was presented with an application to eliminate the requirement of the previously approved and required publicly accessible plaza behind the Brooks Brothers building. The requested amendment of Business Site Plan #124-F was to eliminate the basement within the building as being classified as a third story, because of the actual amount of finished space in the basement used by the tenant is alleged to be less than the amount of finished basement square footage that the applicant requested and that the Commission had approved. The plaza had been required because the applicant requested, and the Commission approved, a building of more than two stories in accordance with Section 656(e) of the Darien Zoning Regulations. The requested 2018 amendment sought to eliminate Conditions 'L' and 'M' of the 2006 Commission approval which had approved activities in the basement and required the establishment of the publicly accessible plaza space on the subject property. The Commission did not act upon or approve that request. That application was subsequently withdrawn by the applicant.

Since the time of the applicant's withdrawal of their application, the Commission has asked staff to give guidance on two issues:

- 1) Whether finished basement space in a two story downtown (CBD Zone) building would count as a third story, thereby requiring a public plaza; and
- 2) Appropriate parking ratios for finished space in basements in commercial buildings in the CBD Zone.

As part of subsequent general meeting discussions by the Planning & Zoning Commission on February 13, 2018 and April 3, 2018, staff and the Commission confirmed that it would be helpful to clarify existing regulation language and existing policies regarding public plazas, number of stories, and finished space or square footage, and to create new definitions and standards, if appropriate.

Note that there was no discussion relative to public plaza requirements in the Noroton Heights Redevelopment (NHR) Zone or the Central Business District-Corbin Subarea (CBD-CS)—any changes to the public plaza requirements would only apply only to the Central Business District (CBD) Zone.

The purpose of these regulation amendments is to better clarify existing Planning & Zoning Department policy regarding the interpretation of what counts as “finished space”, by adding a new definition to Section 210. The long-time existing policy of requiring on-site parking for any finished space in an attic or basement in a commercial zone is also better elaborated pursuant to this proposal with a proposed change to Section 904 of the Regulations.

Historically, the Town has allowed two story buildings in the CBD Zone, and the regulation amendment clarifies that a third story in the CBD zone could be a basement, attic, or a third floor above ground.

As part of this, the Commission is requiring that any new (non-previously approved) finished basement space in a building that is now “parking exempt” or part of a shared parking agreement among multiple properties previously approved by the Commission must provide additional on-site parking.

Consistency with the 2016 Town Plan of Conservation & Development.

The proposal is consistent with the 2016 Town Plan of Conservation & Development (the POCD or “Town Plan”), since it clarifies long-time Department policy. Three points from the Town Plan:

- Page 76 #6—“Revisit parking requirements and establish standards appropriate for a mixed-use downtown area”
- Page 112 #1—“Keep future commercial development consistent with the existing small-town New England character of Darien”
- Page 169—“Implement the POCD”

A. Amendment of public plaza requirements in the CBD Zone

The Commission believes that it would be appropriate to amend Section 656e, which allows for increased building height in the CBD Zone if an area of public open space is maintained by the owner as a plaza or mall space open to the general public is created. These amendments will:

- 1) Clarify existing policy by noting that public plaza or mall spaces shall be formalized by way of easement in the Darien Land Records;
- 2) Clarify that applicants may provide additional public open space plaza or mall space area;
- 3) Create a separate open space plaza standard for finished basement or attic space.

B. Parking ratios for finished space in basements in commercial buildings

Local communities differ in their parking requirements for basement space in non-residential zones. In Darien, the parking requirement for finished basement space is counted relative to its specific use to which it is associated. If the finished basement is used in conjunction with a retail use, the parking requirement for the finished basement is the same as for the retail use. If the finished basement is used in conjunction with a restaurant use, the parking requirement for the basement is the same as for a restaurant. If the basement is unfinished and only used as unfinished storage space, there is no parking requirement for that basement square footage.

We recommend that the Commission require that applicants provide specific details of any fit-up work and activity in basements in non-residential zones. The Commission needs to be clear as to all

proposed activity and/or uses in the basement, and to specify any and all approved use for basement square footage with any necessary conditions of approval.

The February 8, 2018 memo from the Planning & Zoning Department noted possible amendments to Section 904, which would clarify and codify the Town's long-time policy that parking is based upon gross floor area of all space but excludes unfinished attics and/or basements that are only used as mechanical space or storage space.

Related to these matters, and in response to the recent discussions with the Commission, staff believes that amending the definition of "Story" and establishing a new definition of "Finished Space" in the Section 210 of the Regulations would assist in clarifying long-time policy of the Commission and Department, and to allow applicants and property owners to better understand existing interpretations.

Proposed Zoning Regulation amendments (Sections 210, 656, 903, 904, 905) and associated related changes to the inside cover page, table of contents and Appendix 'C' of the Regulations.

New wording in bold

Deleted wording in knockout

Proposed Amendment A:

Establish a new definition of "Finished Space" in Section 210 of the Regulations (and include it in alphabetical order within Section 210):

Finished Space: A portion of the floor area is considered Finished Space if:

- **it is habitable floor area; and/or**
- **used, or could be used, for any purpose other than accessory storage, vehicular parking, or housing of mechanical equipment (such as facilities for heating, plumbing, electrical, water, waste disposal and the like) attached to and required to serve the building; and/or**
- **two or more of the interior surfaces (floors, ceilings, and walls) are covered with, or partially covered with, paint, sheetrock, plaster, paneling, hardwood, tile or any other similar surface covering.**

Proposed Amendment B:

Amend the existing definition of "Story" in Section 210 of the Regulations:

Story: That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there is no floor above it, then the space between the floor and the ceiling next above it. A basement shall be counted as a story if its ceiling is more than five feet above the elevation from which the height of the building is measured, or if floor area in excess of 50 percent of the floor area directly above it used for any purpose other than accessory storage, vehicular parking, or housing of mechanical equipment (such as facilities for heating, plumbing, electrical, water, waste disposal and the like) attached to and required to serve the building. An attic shall be

counted as a story if the finished and habitable portions of the attic are greater than 50 percent of the square footage of the floor immediately below the attic. (See Subsection 225 for illustration.)

In residential zones, if the finished portion of the attic or basement is less than 50 percent compared to the area of the adjacent floor, then it shall be considered a ½ story.

In non-residential zones, any finished space in a basement or third floor/attic counts as a story, even though it may be less than 50 percent of the floor above it or below it.

Proposed Amendment C:

Clarify that additional public open space can be proposed by an applicant and/or required by the Planning & Zoning Commission.

Modify Section 656 Note e3.

3. A 2.5 to 1 ratio shall be utilized in determining maximum gross floor area to be permitted for each square foot of open space developed as a plaza or mall.
Additional public open space developed as a plaza or mall may be approved by the Planning & Zoning Commission.

Proposed Amendment D:

Clarify that “Finished Space” in a basement in the CBD Zone does not require public open space or plaza or mall space, but must meet on-site parking requirements.

Create a new Section 656 Note e4.

4. **For the purpose of this section, any Finished Space in a basement shall not require associated public open space or plaza or mall space. However, Finished Space in basements must comply with the parking requirements in Section 900 *et. seq.***

Proposed Amendment E:

An easement shall be filed in the Darien Land Records to finalize the provision of any public plaza or mall space.

Create a new Section 656 Note e5.

5. **For the purposes of this section, all public open space or plaza or mall space shall be formalized by way of easement to be filed in the Darien Land Records prior to the commencement of construction of the project.**

Proposed Amendment F:

Clarify in Section 903.2 that “Finished Space” in a basement or attic in the CBD Zone does not require public open space or plaza or mall space, but that finished basement or attic space must meet on-site parking requirements, relative to its proposed use.

Modify Section 903.2 of the Regulations

903.2. Dedication to Town

Required off-street parking facilities which, after development, shall be later dedicated to and accepted by the Town, shall be deemed to continue to satisfy the parking requirements for the uses or structures for which they were originally provided. **Any subsequent Finished Space (not previously approved) created in a basement or attic must provide additional on-site parking consistent with the requirements of Section 904 and for the specific use(s) being proposed.**

Proposed Amendment G:

Clarify in Section 904 that “Finished Space” in a basement in the CBD Zone does not require public open space or plaza or mall space, but must meet on-site parking requirements, and to clarify that finished basement or attic space is treated similar to first or second floor space from a parking standpoint.

Modify Section 904 of the Regulations:

To clarify that finished basement or attic space is treated similar to first or second floor space from a parking standpoint.

904. Off-Street Parking Spaces

Except as provided by Section 1000 and Subsection 1057, with respect to additional requirements as a condition for issuance of a Special Permit, the minimum off-street motor vehicle parking facilities shall be provided as follows **in the chart below (square footage includes Finished Space on any floor, including attics and/or basements):**

And add to the end of Section 904 (after the chart)

Where the applicant or property owner has a previously approved site plan (prior to July 1, 2018), any new (not previously approved) finished basement space in a building that has dedicated public parking pursuant to Section 1057 or is subject to a Joint Parking under Section 905 previously approved by the Commission, must provide additional on-site parking Consistent with the requirements of Section 904 and for the specific use(s) being proposed. The exemption from the requirement of on-site parking or reduction of the amount of shared or joint parking shall not be applicable for the creation of finished space in the basement.

Proposed Amendment H:

Modify Section 905 of the Regulations, by adding a new 905d.

To clarify that finished basement space is treated similar to first or second floor space from a parking standpoint.

- d. Any finished basement space shall provide its own separate and distinct on-site parking, and shall not be exempt under Section 1057, nor be allowed to have reduced parking pursuant to any Joint Parking arrangement in effect prior to July 1, 2018.**